

PATENT**Application # 10/045,980**

Attorney Docket # 2001-0027 (1014-162)

REMARKS

The Examiner is respectfully thanked for the thoughtful consideration provided to this application. Reconsideration of this application is respectfully requested in light of the foregoing amendments and the following remarks.

Each of claims 1 and 10 has been amended for reasons unrelated to patentability, including at least one of: to explicitly present one or more elements implicit in the claim as originally written when viewed in light of the specification, thereby not narrowing the scope of the claim; to detect infringement more easily; to enlarge the scope of infringement; to cover different kinds of infringement (direct, indirect, contributory, induced, and/or importation, etc.); to expedite the issuance of a claim of particular current licensing interest; to target the claim to a party currently interested in licensing certain embodiments; to enlarge the royalty base of the claim; to cover a particular product or person in the marketplace; and/or to target the claim to a particular industry.

Claims 1-15 are now pending in this application. Each of claims 1 and 10 are in independent form.

Correct Filing Date

Please change the incorrect filing date of 1 January 2002 to the correct date of filing that is 10 January 2002. Enclosed is a copy of the Certificate of Express Mailing and Express Mail label indicating that the application was deposited with the United States Postal Service on 10 January 2002. It is respectfully requested that the filing date be corrected to 10 January 2002.

The Anticipation Rejections

Each of claims 1-7 and 10-15 was rejected as anticipated under 35 U.S.C. 102(e). In support of the rejection, Texerman (U.S. Publication No. 2004/0141522 A1) was cited. These rejections are respectfully traversed.

PATENT**Application # 10/045,980**

Attorney Docket # 2001-0027 (1014-162)

Texerman fails to establish a *prima facie* case of anticipation. See MPEP 2131. To anticipate expressly, the “invention must have been known to the art in the detail of the claim; that is, all of the elements and limitations of the claim must be shown in a single prior art reference, arranged as in the claim”. *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 242 F.3d 1376, 1383, 58 USPQ2d 1286, 1291 (Fed. Cir. 2001). The single reference must describe the claimed subject matter “with sufficient clarity and detail to establish that the subject matter existed in the prior art and that its existence was recognized by persons of ordinary skill in the field of the invention”. *Crown Operations Int'l, LTD v. Solutia Inc.*, 289 F.3d 1367, 1375, 62 USPQ2d 1917, 1921 (Fed. Cir. 2002). Moreover, the prior art reference must be sufficient to enable one with ordinary skill in the art to practice the claimed invention. *In re Borst*, 345 F.2d 851, 855, 145 USPQ 554, 557 (C.C.P.A. 1965), *cert. denied*, 382 U.S. 973 (1966); *Amgen, Inc. v. Hoechst Marion Roussel, Inc.*, 314 F.3d 1313, 1354, 65 USPQ2d 1385, 1416 (Fed. Cir. 2003) (“A claimed invention cannot be anticipated by a prior art reference if the allegedly anticipatory disclosures cited as prior art are not enabled.”) The USPTO “has the initial duty of supplying the factual basis for its rejection.” *In re Warner*, 379 F.2d 1011, 154 USPQ 173, 178 (C.C.P.A. 1967).

Claim 1, from which claims 2-9 depend recites “for a selected protocol, assembling spoofing frames from an RTS frame transmitted by APs associated with the selected protocol, followed by a CTS frame transmitted by stations associated with the selected protocol”.

Claim 10, from which claims 11-15 depend recites “for a selected standard, assembling spoofing frames from an RTS frame transmitted by APs associated with the selected standard, followed by a CTS frame transmitted by stations associated with the selected standard”.

Texerman does not teach expressly or inherently “for a selected protocol, assembling spoofing frames from an RTS frame transmitted by APs associated with the selected protocol, followed by a CTS frame transmitted by stations associated with the selected protocol” or “for a selected standard, assembling spoofing frames from an RTS frame transmitted by APs

PATENT**Application # 10/045,980**

Attorney Docket # 2001-0027 (1014-162)

associated with the selected standard, followed by a CTS frame transmitted by stations associated with the selected standard".

Instead, Texerman allegedly recites that "[t]o address this issue, the 11a standard specifies an optional Request to Send/Clear to Send (RTS/CTS) protocol at the MAC layer. When this feature is in use, a sending station (MT) transmits an RTS and waits for the access point to reply with a CTS." See page 2, paragraph 14.

Accordingly, it is respectfully submitted that the rejections of claims 1 and 10 are unsupported by Texerman and should be withdrawn. Also, the rejections of claims 2-9 and 11-15, each ultimately depending from one of independent claims 1 or 10, are unsupported by Texerman and also should be withdrawn.

The Obviousness Rejections

Each of claims 8 and 9 was rejected under 35 U.S.C. 103(a) as being unpatentable over Texerman (U.S. Publication No. 2004/0141522 A1) in view of Chang (U.S. Patent No. 5,956,638). These rejections are respectfully traversed.

None of the cited references, either alone or in any combination, establish a *prima facie* case of obviousness. "To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure." See MPEP 2143. Moreover, the USPTO "has the initial duty of supplying the factual basis for its rejection." *In re Warner*, 379 F.2d 1011, 154 USPQ 173, 178 (C.C.P.A. 1967).

PATENT**Application # 10/045,980**

Attorney Docket # 2001-0027 (1014-162)

Claims 8 and 9 recite "for a selected protocol, assembling spoofing frames from an RTS frame transmitted by APs associated with the selected protocol, followed by a CTS frame transmitted by stations associated with the selected protocol".

As discussed above, Texerman does not teach expressly or inherently "for a selected protocol, assembling spoofing frames from an RTS frame transmitted by APs associated with the selected protocol, followed by a CTS frame transmitted by stations associated with the selected protocol". Chang does not cure Texerman's deficiencies.

Thus, even if there were motivation or suggestion to modify or combine the cited references (an assumption with which the applicant disagrees), and even if there were a reasonable expectation of success in combining or modify the cited references (another assumption with which the applicant disagrees), the cited references still do not expressly or inherently teach or suggest every limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness. Consequently, reconsideration and withdrawal of these rejections is respectfully requested.

Allowable Subject Matter

The following is a statement of reasons for the indication of allowable subject matter: "none of the references of record alone or in combination disclose or suggest the combination of limitations found in the independent claims. Namely, claims 1-15 are allowable because none of the references of record alone or in combination disclose or suggest that for a selected protocol (or standard), assembling spoofing frames from an RTS frame transmitted by APs associated with the selected protocol (or standard), followed by a CTS frame transmitted by stations associated with the selected protocol (or standard)."

To: 703-874-9386

From: Eden at Michael Haynes PLC

Pg 12/15 06-06-05 02:46 PM CST

PATENT

Application # 10/045,980

Attorney Docket # 2001-0027 (1014-162)

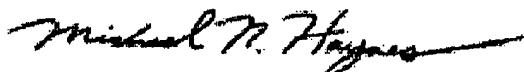
CONCLUSION

It is respectfully submitted that, in view of the foregoing amendments and remarks, the application as amended is in clear condition for allowance. Reconsideration, withdrawal of all grounds of rejection, and issuance of a Notice of Allowance are earnestly solicited.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. 1.16 or 1.17 to Deposit Account No. 50-2504. The Examiner is invited to contact the undersigned at 434-972-9988 to discuss any matter regarding this application.

Respectfully submitted,

Michael Haynes PLC



Date: 6 June 2005

Michael N. Haynes
Registration No. 40,014

1341 Huntersfield Close
Keswick, VA 22947
Telephone: 434-972-9988
Facsimile: 815-550-8850